

No. 06-16231, *Button v. Board of Regents of University and College System of Nevada, et al.* AUG 14 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CLIFTON, Circuit Judge, dissenting:

I respectfully dissent. Plaintiff Lezlie Button seeks only an award of damages, not injunctive relief. To recover money damages she must show that the Board acted with “deliberate indifference.” Duvall v. County of Kitsap, 260 F.3d 1136, 1139 (9th Cir. 2001). Even viewing the evidence in the light most favorable to her, she has not identified sufficient evidence to support such a finding. Indeed, her brief does not even argue that she has.

The Board responded repeatedly to try to satisfy Button’s concerns. The majority cites Duvall in support of the proposition that the denial of a request without investigation is sufficient to survive summary judgment on the question of deliberate indifference, but there is no evidence that the Board ever denied any of Button’s requests without investigation. I infer from the majority’s discussion that the denial allegedly without investigation was the Board’s so-called summary denial of Button’s request that she be provided at the same time with multiple accommodations: Real Time Captioning (RTC), note-taking, and an interpreter. But it did not require a special investigation for university administrators to know that it was not customary for a disabled student to require or to receive all three

forms of assistance at the same time. Moreover, the record shows that university administrators did in fact consult other providers of deaf services about the feasibility of RTC as a form of note taking before denying that request. The denial was not without investigation and it did not demonstrate indifference.

The Board's responses might not have been effective or sufficient to solve the problems – and may not have satisfied the legal obligation to make reasonable accommodations – but there is no evidence of indifference, let alone the “deliberate indifference” needed to support a claim for money damages. I would affirm the judgment of the district court.